IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.490 OF 2003

Mehta Securities Limited. ... Petitioner.

vs.

M/s.Asha Investments & others. ... Respondents.

Mr.A.A.Purohit i/b. M/s.N.I.Bakali, for Petitioner.

None for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 19th April,2005

P.C.:-

1. The petitioner by this petition challenges the Award made by the Arbitral Tribunal dated 26.3.2003. The claim of the petitioner was against the respondent no.1-partnership firm and its partners viz. Respondent nos. 2 and 3. The Arbitral Tribunal has passed the Award against Respondent no.1-firm but has held that the arbitrators cannot make Award against the partners because

they are not parties to the arbitration agreement. This part of the Award is challenged by the petitioner. The petitioner claims that by the Award made against the Firm, the respondent nos. 2 and 3 who were partners are also bound. The next challenge is that the petitioner was claiming interest on the principal amount of Rs.18,82,144.61 (Rupees Eighteen lakhs Eighty Two thousand One hundred Forty four and Sixty One paise only) with effect from 29.9.2000. The Arbitral Tribunal has denied the interest on the ground that there was no agreement in respect of interest. According to the petitioner, there was agreement to pay interest at the rate of 24% per annum. Even if it is assumed that the Arbitral Tribunal was justified in reducing the rate of interest, according to the learned Counsel, interest should have been awarded from 29.9.2000 as claimed by the petitioner.

2. The respondents have been served with the petition. Affidavit of service has been filed. The respondents are not appearing.

3. So far as the first challenge is concerned, admittedly, the respondent no.1-firm is a party to the arbitration agreement. The respondent no.1 Firm does not exist independently of its partners. Admittedly, the respondent nos. 2 and 3 are the partners of respondent no.1. Therefore, when the firm entered into an arbitration agreement, in Law it is an agreement between the partners and the broker. Therefore, the arbitration agreement was binding on respondent nos. 2 and 3 and the very fact that the Arbitrators have

made the Award against respondent no.1 firm, it is obvious that the partners i.e. Respondent nos. 2 and 3 are jointly and severely liable for the amount awarded. In my opinion, the grievance made by the petitioner is well founded and the Award to that extent is liable to be modified.

4. So far as the aspect of interest is concerned, the petitioner has claimed that there was an agreement between the parties for payment of interest at the rate of 24% per annum, that fact has not been disputed and therefore, there is no justification for denying the interest on the principal amount to the petitioner. Thus, the petitioner is entitled to the interest on the principal amount of Rs.18,82,144.61 at the rate of 15% per annum as has been awarded by the Arbitral Tribunal with effect from 29.9.2000. Obviously, this will be simple interest. The petition therefore, succeeds, Award impugned in the petition is modified to the extent that the Respondent nos.1,2 and 3 are directed to pay jointly and severely an amount of Rs.18,82,144.61 with interest at the rate of 15% per annum from 29.9.2000 till the date of realisation. The Respondents shall also pay costs of this petition to the petitioner as incurred by the petitioner.